IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 597 of 2000
in
SPECIAL CIVIL APPLICATION.No 4015 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA
and
Hon'ble MR.JUSTICE R.R.TRIPATHI

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

MANOHARSINHJI PRADYUMANSINHJI JADEJA

Appearance:
MR SN SHELAT, ld. Addl.Advocate General with MS HARSHA DEVANI, ld.AGP for Appellants (original respondents)
MR JR NANAVATI and MR PV HATHI with MR AR THAKKAR for Respondent (original petitioner)

CORAM : MR.JUSTICE M.R.CALLA
and
MR.JUSTICE R.R.TRIPATHI

Date of decision: 11/10/2000 & 20/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE M.R.CALLA)

The State of Gujarat has come in appeal against

the judgment and order dated 6th May 1999 passed by the learned Single Judge in Special Civil Application No.4015 of 1990 whereby the petition was allowed and the judgment and order dated 8th September 1989 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN.B.R.4 of 1989 confirming the orders at Annexures.A and B in Special Civil Application as had been passed by the Dy.Collector, Mamlatdar and ALT in so far as the bid land Survey No.111/2 admeasuring 30 acres and 30 gunthas and Survey No. 111/3 admeasuring 529 acres and 27 gunthas are concerned was quashed and set aside and the Rule was made absolute.

2. The controversy between the parties hinges around the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960 and the amendment made therein vide Gujarat Agricultural Lands Ceiling (Amendment) Act, 1972 and the provisions of the Urban Land (Ceiling and Regulation) Act, 1976 and the Urban Land (Ceiling and Regulation) Repeal Act, 1999.

The Gujarat Agricultural Lands Ceiling Act, 1960 (Gujarat Act No.XXVII) of 1961 came into force on 15th June 1961.

The Gujarat Agricultural Lands (Ceiling Amendment) Act, 1972, i.e. the Gujarat Agricultural Lands Ceiling Amendment Act, 1972 (Gujarat Act No.2) of 1974 came into force on 1.4.1976.

On 14th August 1972, a resolution was passed by the Gujarat State Legislative Assembly under Clause (1) of Article 252 of the Constitution and that resolution dated 14th August 1972 is reproduced as under:

"Whereas this Assembly considers that there should be a ceiling on the holding of urban immovable property;

And Whereas the imposition of such ceiling and acquisition of the urban immovable property in excess of their ceiling are matters with respect to which Parliament has no power to make laws for the States except as provided in Articles 249 and 250 of the Constitution;

And Whereas it appears to this Assembly to be desirable that the aforesaid matter should be regulated in the State of Gujarat by Parliament by law;

Now, therefore, in pursuance of clause (1) of Article 252 of the Constitution, this Assembly hereby resolves that the imposition of the ceiling on the holding of urban immovable property and acquisition of such property in excess of the ceiling and all matters connected therewith or ancillary and incidental thereto should be regulated in the State of Gujarat by Parliament by law."

Thereafter, the Urban Land (Ceiling and Regulation) Act, 1976 was enacted by the Parliament after the Gujarat State Legislative Assembly resolution dated 14th August 1972 and the said Urban Land (Ceiling and Regulation) Act, 1976 came into force on 17th February 1976.

The Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act No.15 of 1999) was adopted by resolution passed by the Gujarat Legislative Assembly on 30th March 1999 and the same is reproduced as under:

"WHEREAS on the 14th August, 1972, this Assembly in pursuance of clause (1) of Article 252 of the Constitution of India, resolved to the effect that the matters relating to the imposition of ceiling on the holding of urban immovable property and acquisition of such property in excess of the ceiling and all matters connected therewith or ancillary and incidental thereto be regulated in the State by Parliament by law;

AND WHEREAS by virtue of the said Resolution, the Parliament has enacted the Urban Land (Ceiling and Regulation) Act, 1976 (Act No.33 of 1976) providing for imposition of ceiling on vacant land in urban agglomerations;

AND WHEREAS in pursuance of clause (2) of Article 252 of the Constitution of India, Resolutions have been passed by the Legislatures of the States of Haryana and Punjab to the effect that the aforesaid Act of 1976 should be repealed in those States by Parliament by law;

AND WHEREAS the Parliament has enacted the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act No.15 of 1999) repealing the said Act of 1976 in the States of Haryana and Punjab and all the Union Territories and the said Act shall also

apply to such other State which adopts this Act by Resolution passed in that behalf under clause (2) of Article 252 of the Constitution of India;

AND WHEREAS it is expedient to repeal the said Act of 1976 in the State of Gujarat, so that land in urban area may be available for its proper utilisation and for reviving the stagnant housing industry;

AND WHEREAS the Government is committed to provide housing to the economically weaker sections and low income groups of the society and for developing infrastructural facilities such as water supply, drainage, sanitation, roads, etc.;

AND WHEREAS Government of India has laid down guidelines of a recommendatory nature for achieving social objectives after repeal of the Act of 1976;

AND WHEREAS in pursuance of the said guidelines, the Government is considering taking steps to provide affordable living accommodation for those who are without shelter and especially the people belonging to economically weaker sections of the society and to low income groups in the State;

AND WHEREAS in pursuance of the said guidelines, Government is also considering imposition of tax on vacant land in urban area within a period of three months so as to persuade the land holders to put their land to use and also to provide financial assistance for housing schemes of economically weaker section of the society and of low income groups and for developing infrastructural facilities such as water supply, drainage, sanitation, roads etc. in the urban areas;

NOW, THEREFORE, in pursuance of clause (2) of Article 252 of the Constitution of India, read with clause (1) thereof, this Assembly hereby resolves that the Urban Land (Ceiling and Regulation) Repeal Act, 1999 (Act No.15 of 1999) be adopted for this State."

3. The original petitioner - the respondent herein claims to be the heir of the Ruler of the Erstwhile Rajkot State. The lands which were retained by the Ruler of the Rajkot included the land Survey No. 111/2

admeasuring 30 acres and 30 gunthas and Survey No.111/3 admeasuring 579 acres and 27 gunthas total of which comes to 610 acres and 27 gunthas. The said lands were bid lands and according to the petitioner, they were highly uneven, hilly, rocky and uncultivable where no grass grows. It is the case of the petitioner that the said lands devolved upon him and he was the holder of these lands amongst other lands. On 29th June 1976, the original petitioner filled in Form under Section 10 of the Gujarat Agricultural Lands Ceiling Act, 1960 with regard to the lands as aforesaid comprising of Survey Nos.111/2 and 111/3 since they were bid lands and were required to be shown having regard to the provisions of Section 2(17) of the Gujarat Agricultural Lands Ceiling Act, 1960.

20th Oct.2000:

4. Learned Addl.Advocate General has submitted that whereas the Urban Land Ceiling and Regulation Act had come into force on 17th Feb.1976 and the Agricultural Lands Ceiling Act which was enacted in 1960 was amended on 23rd Feb.1974, even if it was brought into force on 1.4.1976, i.e. the date after 17th Feb.1976, whereby the definition of land was amended so as to include bid lands, it cannot be said that the State Legislature could not amend the definition with regard to bid lands in the Act merely because the resolution had been passed by the Assembly on 14th Aug.1972. By passing the said resolution, the State Legislature cannot be said to have abdicated its powers with regard to making amendment in the Act of 1960 and it was also submitted that the amendment was only with regard to the definition of the land and there was amendment with regard to the subject to ceiling of the agricultural land. He has submitted that no changes have been made so far as the provision relating to the Ceiling Act is concerned and that the State Legislature is not wholly denuded from the power of making any enactment on the aspects other than the aspects which directly deal with the question of ceiling. In Part-XI, i.e. Relations between the Union and the States under Chapter 1, distribution of Legislative Powers, through Article 245, the extent of laws made by Parliament and by the Legislatures of States has been provided and this Article 245 is reproduced as under:

"245. Extent of laws made by Parliament and by the Legislatures of States-- (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a

State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation."

Article 246 deals with the subject-matter of laws made by Parliament and by the Legislature of States. Article 249 provides for the power of the Parliament to legislature with respect to a matter in the State List in the national interest and Article 252 provides for power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State. Article 252 is reproduced as under:

"252. Power of Parliament to legislate for two or more States by consent and adoption of such legislation by any other State. (1) If it appears to the Legislatures of two or more States to be desirable that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in Articles 249 and 250 should be regulated in such States by Parliament by law, and if resolution to that effect are passed by all the Houses of the Legislature of those States, it shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any Act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.

(2) Any Act so passed by Parliament may be amended or repealed by an act of Parliament passed or adopted in like manner but shall not, as respects any State to which it applies, be amended or repealed by an Act of the Legislature of that State."

Under List II - State List of Sch.VII, item no.8 is reproduced as under:

"18. Land, that is to say, rights in or over land, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of agricultural land; land improvement and agricultural loans; colonization."

Entry No.42 of List-III,i.e. Concurrent List, provides for acquisition and requisitioning of property.

4. It is, therefore clear that unless there is a resolution passed by the State Assembly under Article 252 by Legislatures of two or more States that in matters with respect to which the Parliament has no power to make laws for the States except as provided in Articles 249 and 250 should be regulated in such States by Parliament by law and after resolutions to that effect are passed by all the Houses of the Legislature of those States, the Parliament cannot legislate with regard to the State subject which is specifically provided in the State List-II of the Sch.VII of the Constitution. In the instant case, there is no dispute that such a resolution had been passed by the State Assembly and the resolutions had been passed by more than two States. On that basis, the Urban Land Ceiling Act was passed and the same was brought into force from 1.4.1976. It is to be noted that there are two Acts before us; one with regard to the Agricultural Lands Ceiling and the other is with regard to the Urban Land Ceiling. The controversy has assumed importance because the agricultural land in question forms part of the urban agglomeration and the factual position is that the agricultural land forms part of an urban agglomeration is not in dispute. The question which therefore arises is as to whether any law could be framed by way of amendment or otherwise by the State Legislature and brought into force from 1.4.1976 with regard to such land which formed part of an urban agglomeration which was to be dealt with under the Ceiling law and for which the law had been made by the Parliament and brought into force from 1.4.1976. The State Legislature had virtually abdicated its power to legislate on the subject and only on the basis of such abdication of power, the Parliament had enacted the Urban Land Ceiling Act and the provisions of such Act when applied to the urban agglomeration, if any, the agricultural lands form part of the urban agglomeration, there could not be any State law for that purpose after 1.4.1976. On this aspect of the matter, it was also submitted that the Gujarat Agricultural Lands Ceiling Act, 1950 had come into force on 15th June 1961 and the amending Act was enacted on 23rd Feb.1976 and that this date is prior to the date on which the Ceiling Act came into force. This submission, however, cannot help the appellants for the simple reason that even if the enactment was made on 23rd Feb.1976, the same was brought into effect on 1.4.1976, i.e. after 17th Feb.1976. On behalf of the respondent, Mr.J.R.Nanavati placed reliance

on the decision of the Supreme Court in the case of Thumati Venkaiah etc. v. State of Andhra Pradesh and ors., reported in AIR 1980 SC 1568 and in the case of Krishna Bhimrao Deshpande v. Land Tribunal, Dharwad, reported in AIR 1993 SC 833. In the case of Thumati Venkaiah (supra), the Andhra Pradesh Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 was in question in which an amendment was made. The amending Act was enacted in the year 1977 and it was given retrospective effect from 1.1.1975. While the amending Act itself was enacted after 17th Feb.1976, it was brought into force from 1.1.1975, i.e. the date prior to the date to 17.2.1976. Thus, the amending Act enacted after 17th Feb.1976 was given retrospective effect from a date prior to 17th Feb.1976, i.e.1.1.1975. The Supreme Court in such a fact-situation held that the Andhra Pradesh Legislature had at the time when the Andhra Pradesh Act was enacted, no power to legislate with respect of ceiling on urban immoveable property and that power stood transferred to Parliament and as a first step towards the eventual imposition of ceiling on immoveable property of every other description, the Parliament enacted the Central Act with a view to impose ceiling on vacant land other than the land mainly used for the purpose of agriculture in an urban agglomeration. The argument was also considered that the Andhra Pradesh Act sought to impose ceiling on land in the whole of Andhra Pradesh including land situate in urban agglomerations and since the concept of urban agglomeration defined in Section 2(n) of the Central Act was an expansive concept and any area with an existing or future population of more than one lakh could be notified to be an urban agglomeration, the whole of the Andhra Pradesh Act was ultra vires and void as being outside the legislative competence of the Andhra Pradesh Legislature, plausible though it may seem, is unsustainable. It was held that it could not be contended that merely because an area may possibly in the future be notified as an urban agglomeration under S.2(n)(A)(ii) of the Central Act, the Andhra Pradesh Legislature would cease to have competence to legislate with respect to ceiling on land situate in such area, even though it was not an urban agglomeration on the date of enactment of the Andhra Pradesh Act, but it has been made clear that when an area is notified as an urban agglomeration under S.2(n)(A)(ii), the Central Act would apply to land situate in such area and the Andhra Pradesh Act would cease to have application, but by that time the Andhra Pradesh Act would have already operated to determine the ceiling on holding of land falling within the definition in Section 3(j) and situate within such area. It is, therefore, clearly discernible

from this decision of the Supreme Court that so far as the urban agglomerations are concerned, it no more remains within the legislative competence of the State to provide for imposition of ceiling on land situate within the urban agglomeration. By changing the definition of the land in the Agricultural Lands Ceiling Act, if any lands which form part of the urban agglomeration are sought to be dealt with, it would certainly have an effect on the ceiling on urban agglomeration and therefore, it would certainly fall outside the legislative competence of the State. Once it is found that the change of definition of land includes the bid lands which are otherwise part of the urban agglomeration, the amending Act shall certainly besiege the legislative competence of the State. In yet another decision in the case of Krishna Bhimrao Deshpande (supra), the Supreme Court held that passing of a resolution by two or more State Legislatures is a condition precedent for the Parliament to exercise its legislative power under Article 252 of the Constitution of India. Article 252 vests the power to legislate in the Parliament, only if two or more State Legislatures think it desirable to have a law enacted by the Parliament on such matters in Sch.VII List-II, i.e. with respect to which the Parliament has otherwise no power to make law for State. In this case before the Supreme Court, the Karnataka Land Reforms Act, 1962 was amended in the year 1974, i.e. on 1.4.1974 and the same was given effect to on 2.1.1985, i.e. after the date on which the Ceiling Act came into force on 17th Feb.1976. In para 4 of this judgment, after referring to the various provisions of the Urban Ceiling Act and after considering the definition of the urban agglomeration and urban land as provided in Sec.2(n) and 2(o) of the Ceiling Act, it has been observed that the provisions under Chapter-III which exclusively deal with the conferment of occupancy rights on tenants have nothing to do with the imposition of ceiling on holdings of agricultural land under the Act. It is only Chapter-IV of the said Act which deals with ceiling on land holdings and now that the land in the instant case comes under the urban agglomeration the imposition of the ceiling should naturally be under the provisions of the Urban Ceiling Act and not under the Karnataka Land Reforms Act. It was also observed that the High Court did not deal with this aspect and therefore, it was made clear that in respect of imposing ceiling on the land under the Urban agglomeration the provisions of the Ceiling Act alone are applicable and to that extent, the provisions of Chapter-IV of the Act which also deal with the imposition of the ceiling would not be applicable. The earlier

decision in the case of Thumati Venkaiah (supra) has also been referred to and the following observations have been quoted from the said judgment:

> "It is no doubt true that if the Andhra Pradesh Act seeks to impose ceiling on land falling within an urban agglomeration, it would be outside the area of its legislative competence, since it cannot provide for imposition of ceiling on urban immoveable property."

The Supreme Court had then stated the crucial question as to whether the provisions of Chapter-III of the Act also become inoperative by virtue of the resolution passed under Article 252 and particularly on the ground that it is a matter of imposition of ceiling on urban land or other matters connected therewith or ancillary and incidental thereto. In para 6 of this judgment, it has been observed that it is well settled that the legislative power of the State has to be reconciled with that of the Parliament and that in their respective fields each is supreme. Learned Addl.Advocate General has also placed reliance on this very decision. While referring to Kannan Devan Hills Produce Company Ltd. v. State of Kerala, reported in AIR 1972 SC 2301, the observations made by the Supreme Court in this case have been quoted in para 6 as under:

> "It seems to us clear that the State has legislative competence to legislate on Entry 18, List II and Entry 42 List III. This power cannot be denied on the ground that it has some effect on an industry controlled under Entry 52, List I. Effect is not the same thing as subject matter. If a State Act, otherwise valid, has effect on a matter in List I it does not cease to be a legislation with respect to an entry in List II or List III."

The Supreme Court then found that in the case before it there was no conflict and the imposition of ceiling on urban immoveable property was an independent topic and could not be construed as to nullify the other subject left in the domain of the State Legislature under Entry 18 inasmuch as imposition of ceiling is a distinct and separately identifiable subject and does not cover the other measures such as regulation of relationship of landlord and tenant in respect of which the State Legislature has competence to legislate. Thus the one topic that is transferred in the resolution based under Article 252 is distinct and separately identifiable and

does not include the remaining topics under Entry 18 in respect of which the State alone has the power to legislate. An examination of the various provisions of the State Act makes this aspect clear. The object underlying the Act is to make a uniform law in the State of Karnataka relating to agrarian relations, conferment of ownership on tenants, ceiling on land holdings etc. Reference has also been made to the relevant provisions and it was found that the ceiling on the area in this context was only for the purpose of Section 45 and that these were topics regarding the conferment of occupancy rights on the respective tenants and they do not in any way conflict with the subject matter transferred to the Parliament by the resolution passed under Article 252 and consequently the Special Leave Petitions were dismissed. It is on this portion that great emphasis had been laid down by learned Addl.Advocate General and as such, notwithstanding the resolution passed by the State Legislature under Article 252 in this case only the State Legislature has power to legislate with regard to any amendment in the Agricultural Lands Ceiling Act, 1960.

We have considered the ratio of both these decisions of the Supreme Court and we find that the whole object of the resolution which was passed by the State Legislature under Article 252 was to have a Central Act for the purpose of the lands of urban agglomeration. In the facts of the present case, when it is not disputed that the land in question forms part of the urban agglomeration, it cannot be argued that the amendment which was made and brought into force from 1.4.1976 could also take into its effect or impact or indirectly on non agricultural land forming part of the urban agglomeration and therefore, the observations from the Supreme Court decision on which the reliance has been placed by learned Addl.Advocate General are of no avail in the facts of the present case. So far as an identifiable item which may be separate and distinct is concerned, this item in the instant case refers to urban agglomeration. Once it is admitted that the bid lands were earlier not covered for the purpose of agricultural land ceiling and that the same came to be covered for the purpose of Ceiling Act, only by the amending definition, such amendment could not affect any agricultural land which was already there in the urban agglomeration.

5. Learned Addl. Advocate General then submitted that even if the amendment which was brought into force from 1.4.1976 in the Agricultural Lands Ceiling Act is ignored, since the appointed date as defined under the Act is a date prior to 17th Feb.1976, the ceiling with

regard to agricultural land has to be determined as on that date and whereas the agricultural land in question was not a part of the urban agglomeration at the time when the original Act came into force, it has to be taken into consideration as such for determining their ceiling limits. This argument on a first look seems to be quite plausible and attractive, but on a proper scrutiny, we find that the argument cannot be accepted for the reason that in the facts of the present case, it has been given out that barring the amendment which was brought into force from 1.4.1976, the respondent had no liability for the purpose of ceiling under the Ceiling Act and the liability under the Ceiling Act came only on the basis of this amendment and not otherwise. The question is that any land even if it was agricultural land if it has been taken in the form of urban agglomeration, in that case, after coming into force of the Central Act on 17th Feb.1976, whether such land shall be still dealt with under any law other than the Central Act and this question has been answered in no uncertain terms by the Supreme Court decisions as aforesaid and therefore, this argument raised by learned Addl.Advocate General also fails.

6. Learned Addl.Advocate General then cited the case of Vrandavandas K. Shroff v. Shri Khan, Mamlatdar and Agricultural Lands Tribunal, Nizar and anr., reported in 1993(2) GLH 833 in which the Division Bench considered the challenge which was thrown to the Gujarat Agricultural Lands Ceiling Act, 1960 (Gujarat Agricultural Lands Ceiling) (Amendment) Act, 1972 and Sec.6(3A) thereof. This challenge to the amendment failed and the Division Bench held that this Section was constitutionally valid and was within the legislative competence of the State. For the purpose of appreciating this, we may straightway say that this pointed question was under consideration in this case before the Division Bench as was mentioned in the end of para 1 of the judgment as under:

(i) If the State Legislature thinks it desirable that persons holding lands in different parts of Gujarat and persons holding lands in different parts of India should be treated equally so far as holding land in Gujarat is concerned, can it do so?

(ii) Whether the Gujarat Act, which takes into consideration the agricultural land holdings elsewhere in India of a person holding agricultural land in Gujarat for the purpose of

finding out the extent to which he can hold agricultural lands in Gujarat, trespasses into the field of other State Legislatures?

The Division Bench itself has said that these are the basic questions raised in these petitions and while answering these questions, in para 7 it was observed that for the purpose of ascertaining the Legislative competence of the State Legislature, in respect of the provisions of the said Act, in so far as it legislates in respect of the land and rights in or over the land, Entry No. 18 of the State List-II of the 7th Schedule to the Constitution would be relevant. According to the Division Bench, it could have bearing on the aspect of acquisition, of surplus agricultural land for the purpose of allotment to persons who are in need of lands for agriculture, as envisaged in the preamble of the Act would be Entry No.42 of List-III which deals with the acquisition and requisitioning of the property. Thus, in this case, there was no question for consideration before the Court as to whether any land which was to be dealt with under the Central Act was subjected to any amendment and the question of Legislative competence of the State Legislature was considered only with respect to territorial aspect and it was for this reason that the Division Bench did not agree with the view taken by the Full Bench of the Bombay High Court that consideration of holding of a land by a person in another State for the purpose of computing the area that he can hold in this State would amount to clubbing together of two unconnected events or that it would amount to extra-territorial legislation. In fact, if the lands held in other States are also taken into consideration for the purpose of ceiling, that would not mean to legislate with regard to the same land for which the legislation had been passed under Article 245(2) of the Constitution. The Legislature has competence to enact the law, relevant factors can be taken into account and such factors may be operative from outside the territorial limits of the State. Mere consideration of such factors which existed outside the State, for the purpose of legislating in respect of the subject for which the Legislature is competent to make law, would not amount to extra-territorial legislation and the Division Bench has clearly held that such considerations are part of the exercise of plenary legislative functions of the State. A legislative entry does not merely enunciate powers, it specifies a field of legislation and the widest import and significance should be attached to it. The power to legislate on a specific topic includes the power to legislate in respect of the matters which may

fairly and reasonably be said to be comprehended therein and therefore when the object of the law is to fix a ceiling on holding agricultural land in the State and to provide for the acquisition and disposal of surplus agricultural lands within the State, it cannot be said that such law cannot reasonably comprehend as to how much land a person holds elsewhere for ascertaining his entitlement to hold land within the State. Further in para 10 of this judgment, it was considered by the Division Bench regarding the question of extra-territorial operation of State laws as was considered in the case of State of Karnataka v. Ranganatha Reddy reported in AIR 1978 SC 215, in the case of Bengal Immunity Co. Ltd. v. State of Bihar, reported in AIR 1955 SC 661 and the observations from Bengal Immunity Co. Ltd. (supra) which have been approvingly referred to in the case of State of Karnataka v. Ranganatha Reddy (supra) have been quoted, wherein it has been held that the words "extra-territorial operation" are used in two different senses as connoting, firstly, laws in respect of acts or events which take place inside the State but have operation outside, and secondly, laws with reference to the nationals of a State in respect of their acts outside; that in its former sense, the laws are strictly speaking intra-territorial though loosely termed "extra-territorial" and that under Article 245(1) it is within the competence of the Parliament and of the State Legislatures to enact laws with extra-territorial operation in that sense. While considering the words "extra-territorial operation" in Article 245(1), it was held that it must be understood in their second and strict sense as having reference to the laws of a State for their nationals in respect of acts done outside the State. Otherwise, the provision would be redundant as regards the legislation by Parliament and inconsistent as regards laws enacted by States. In para 12 of the judgment, the Court further considered the contention that if the State wants to legislate on a subject in the State List while taking into account the factors or events outside the limits of the State, the only course available to it was to resort to the provisions of Article 252(1) of the Constitution, and it has no option but to approach the Parliament for such purpose as was done in the case of enacting the Urban Land Ceiling Act and the submission was also considered that if this was not done, then the exercise of enacting the provisions of Article 252(1) in the Constitution would be a futile exercise; and further submission was also considered that the State Legislature had power to legislate on the subject entrusted to it by taking into account factors prevalent beyond the territorial limits,

then there was no need to make the provisions contained in Article 252(1) and even the Urban Land Ceiling Act could have been enacted by each State. The Division Bench then considered the submission to be fallacious and observed that it ignores the doctrine of territorial nexus which has been enunciated in the decisions of the Apex Court. It has been held that if the subject falls exclusively in List II and in no other list, then the power of the State Legislature is supreme. It would be wrong to say that the Parliament alone is sovereign. The very premises that the Parliament is sovereign and the States are something less, even as regards the powers which have been exclusively entrusted to them, will be incorrect in view of our Constitutional scheme which does not envisage that the Parliament alone should be sovereign. As regards the subjects exclusively entrusted to the States, the States have plenary powers and if legislation is validly made on the doctrine of territorial nexus, it cannot be questioned on the ground of extra-territoriality. The further contention that when two States approach the Parliament to legislate in respect of any of the matters enumerated in the State List for which the Parliament has no powers to make laws, except as provided under Articles 249 and 250, the said subject stands transferred to the Parliament and thereafter, even other States will have no power to make law on that subject and their option would only be to adopt the law made by the Parliament under Article 252(1), is against our Constitutional Scheme and devoid of any substance. It has been observed that such a proposition canvassed will produce a startling result as it cannot be the intention behind the provisions of Article 252(1) to denude the other State Legislature who do not approach the Parliament of their power to make laws on the State Subjects and to have the effect of transferring the entry from the State List to the Concurrent List. No such proposition emerges from the decision of the Supreme Court in the case of Union of India v. Basavahia, reported in AIR 1979 SC 1419 which was rendered in the context of the Urban Land (Ceiling and Regulation) Act. It has been observed that the decision of the Supreme Court in the case of Union of India v. Basavahia (supra) in no way detracts from the doctrine of territorial nexus on the basis of which the State Legislature, was competent to make the impugned provisions. It was mentioned in particular that there is no occasion to consider any law made under Article 252(1) of the Constitution and therefore, the question which is sought to be raised on behalf of the petitioners is only a hypothetical one and does not really arise on the facts of this case. However, regarding the contention that the

State Legislature has no option but to approach the Parliament under Article 252(1), the Court expressed the view that the power of State Legislature which does not subscribe to the Act of the Parliament made under Article 252(1), is in no way, affected.

It is, therefore, clear that in this case before the Division Bench of this Court, the basic questions were with regard to the framing of the laws for the holders of the lands in the State with regard to the lands held by them in other States and as to whether the Legislature's competence was there or not in the context of the competence for extra-territorial matters. The question as cropped up in the present case before us was never under consideration and there was no occasion for examining the question of Legislative competence of the State Legislature with reference to Article 252 of the Constitution. Thus, in our opinion, this case has no direct bearing on the question involved with which we are concerned in the present case.

7. It was also submitted that the aforesaid decision of this Court was confirmed by the Supreme Court in the case reported in JT 1994 (5) 91. However, we further find that this case is clearly distinguishible. Even the Supreme Court in para 7 after referring to Entries 18 - List II 42 List III, 7th Schedule of the Constitution has observed that the State Legislature derives the legislative competence to enact the Act from the aforesaid entries and the grievance that while enacting the impugned provisions the State Legislature has transgressed its legislative powers by making provisions of the Act to operate in respect of persons and property beyond the territorial jurisdiction of the State of Gujarat. The Supreme Court has observed that the Act has to satisfy the principles of territorial nexus which are essentially discernible from the factual application of the provisions of the Act; that the sine qua non for the application of the provisions of the Act is the holding of the land within the State of Gujarat. Further observations made in para 9 make the provision clear when it is observed that the factum of a person holding land outside the State of Gujarat is undoubtedly an aspect pertinent to the question of his entitlement under the Act to hold land in the State of Gujarat and that there is no dispute that within the State a ceiling can be fixed by law beyond which no person can hold agricultural land, and if for determining the extent of said ceiling, the land held by a person outside the State is taken into consideration, the law pertaining to fixation of ceiling would not become extra-territorial. In pith and

substance the law remains to be a legislation imposing the ceiling on holding of land within the State under Entry 18 List II read with 42 List III of the 7th Schedule of Constitution of India and the mere consideration of some factors which exist outside the State, for the purpose of legislating in respect of the subject for which the legislature is competent to make law, would not amount to extra territorial legislation. The conclusion is that when a Statute fixes the ceiling on agricultural land holding within the State, it would not become extra-territorial simply because it provides that while determining the permissible area of a person under the said Statute the land owned by him outside the State is to be taken into consideration.

It was for these reasons that the impugned provisions were found to be within the legislative competence of the State Legislature and that too was a case for the benefit of the State. In our considered view, these decisions are not applicable to the facts of the present case and do not lend any strength or support to the argument raised by learned Addl. Advocate General.

8. The impugned order passed by the learned Single Judge was also assailed on the submission that the original petitioners had never challenged the amendments in question and unless the provisions were challenged, there was no question of any relief in favour of the petitioners. This submission on the face of it is not acceptable for the simple reason that there is no question of challenge to these provisions nor to the amending Act. However, the question is as to whether the provisions of the amending Act could be made applicable to the agricultural lands within the urban agglomeration and if a provision which is not applicable to a land forming part of the urban agglomeration, whether the challenge is there to the provisions or not, in effect, no action pursuant to such amendment could be taken for want of applicability and therefore, this contention which has been taken by learned Addl.Advocate General so as to assail the order of the learned Single Judge cannot be sustained and the same is hereby rejected. Faced with such a situation, it was submitted that once the Urban Land Ceiling Act had been repealed on 22nd March 1999 and the same had been adopted by the State of Gujarat on 30th March 1999, there was no live controversy so as to be considered and the Court should not issue any futile writ. The argument is that with the repealing of the Urban Land Ceiling Act, there is no urban agglomeration and the land in question has been reverted back to plain

and simple agricultural land, has nothing to do with the urban agglomeration. It may be pointed out in this regard that the petition as had been filed by the original petitioner in this Court was essentially a petition in the nature of certiorari seeking the quashing and setting aside of the judgment of the Gujarat Revenue Tribunal, dated 8th Sept.1989 passed in Revision Application No.TEN.B.R. 4 of 1984 whereby the orders passed by the Dy.Collector and the Mamlatdar and ALT had been confirmed and the declaration that the lands could not be taken into computation under the Ceiling Act. The legality, validity, propriety and correctness of the order dated 8th Sept.1989 which had been passed by the Gujarat Revenue Tribunal and the orders which had been passed by the authorities such as Dy.Collector and Mamlatdar and ALT in the Special Civil Application had to be examined on the basis of the position of law as it was in existence on the date such orders were passed and as on that date after the amending Act or the change in the definition of the land under the Agricultural Lands Ceiling Act so as to include bid lands therein, could not be taken into computation under the Ceiling Act, there is no question of arguing that it will be a futile exercise now merely because the Urban Land Ceiling Act has been repealed. Mr.J.R.Nanavati has emphatically submitted that the only effect of the repealing of the Urban Land Ceiling Act is that the State Legislature has regained power to legislate now after 30th March 1999 and it is open for the State Legislature to enact any laws in this regard as it deems proper, but the repealing of this Act by itself cannot have any effect of validating any action or orders in proceedings which have been taken at the relevant time when the orders were passed by the competent authorities under the provisions of the Act. Reliance has been placed by Mr.Nanavati on the observations made in the end of para 12 of the judgment in the case of Ram Kristo Mandal and anr. v. Dhankisto Mandal, reported in AIR 1969 SC 204, wherein the Supreme Court has observed that the transaction being invalid and void, the fact that Section 27 was subsequently repealed made no difference as repeal could not have the effect of rendering an invalid and void transaction to be a valid and binding transaction. Mr.Nanavati has also placed reliance on para 30, 31, and 32 of the decision in the case of Kanapravan Kalliani Amma (Smt.) and ors. v. K. Devi and ors., reported in (1996) 4 SCC 76. In para 30 of the said decision, the Supreme Court has observed that the repealing Act does not indicate any intention contrary to the provisions contained in the Kerala Interpretation and General Clauses Act which, therefore, will apply with full vigour on the principle that

whenever there is a repeal of any enactment, the consequences indicated in Section 4 would follow, unless there was any saving clause in the repealing enactment or any other intention was expressed therein. In the case of simple repeal, there is hardly any room for the expression of a contrary view. In para 31, the Supreme Court noticed that Section 7(2) of the repealing enactment which was in question in that case was a case of repeal simpliciter and the operation of the provisions of law could not be affected by the repeal nor will the repeal affect anything duly done or suffered thereunder was also a liability incurred under the Act will remain unaffected and will not be obliterated by the repeal. According to the Supreme Court, the repeal does not mean that it never existed on the statute book nor will the repeal have the effect of validating any act if it was already void. Thus, if a piece of legislation which has remained in force for certain period, it does leave its own imprint on all the transactions which took place during that period and this Court is of the considered view that even if such an enactment is later on repealed, the repealing of such an Act cannot have the effect of undoing the orders which have been passed by the competent authorities in accordance with law during the period when such law was in force. The effect of repeal has been considered in the case of the State of Rajasthan v. Mangilal Pindwal, reported in AIR 1996 SC 2181 cited by Mr.Nanavati by the Supreme Court, wherein in para 12, it has been held that as a result of repeal of a statute, the statute as repealed ceases to exist with effect from the date of such repeal but the repeal does not affect the previous operation of the law which has been repealed during the period it was operative prior to the date of such repeal. In view of this position, it is not possible for this Court to hold that on account of the repealing of of the Urban Land Ceiling Act on 30th March 1999, it has become a case of issuing futile writ.

9. While arguing in rejoinder, Mr.Nanavati for the original petitioner also sought to support the impugned judgment and argued that in the case of the former Ruler of Bhavnagar, he possessed certain lands admeasuring 952 acres and 33 gunthas situate at Vadva in Bhavnagar City and the same were sold out by registered Sale Deed dated 31st March 1971 to Palitana Sugar Mills on 2nd April 1971 for valuable consideration; that the said lands were bid lands and known as "Kalvi Bid"; that when the ULC Act came into force on 17th Feb.1976, the proceedings were pending under the Agricultural Lands Ceiling Act before the Gujarat Revenue Tribunal; that Palitana Sugar Mills filled in the form under Sub-section (1) of Section 6 of

the ULC Act and also applied for permission under Section 21 of the ULC Act; the State Govt. was required to decide as to whether ULC Act would be applicable and what would be the result of the proceedings under the Agricultural Lands Ceiling Act; whether the scheme would be granted or not; the State Govt. after careful consideration passed an order on 5th Nov.1979 whereby the Govt. took the decision that the aforesaid lands known as "Kalvi Bid" were required to be dealt with under the provisions of the ULC Act and not under the Agricultural Lands Ceiling Act; the competent authority by order dated 6th Nov.1979 granted permission under Section 29 of the ULC Act to build houses for weaker sections of the society; that by order dated 9th Nov.1979, the Dy.Collector, Bhavnagar in Ceiling Case No.1/76/77 held that having regard to the order passed by the Govt. in Revenue Department dated 5th Nov. 1979, the provisions contained in Agricultural Lands Ceiling Act are not applicable but the provisions of ULC Act are applicable and therefore, the proceedings in respect of the aforesaid land bearing Ceiling Case No.1/76/77 Bhavnagar was removed from the file. The Dy.Collector, Bhavnagar by letter dated 10th Jan.1990 informed the Chief Officer of Bhavnagar Municipality that the provisions contained in Agricultural Lands Ceiling Act are not applicable but the provisions contained in ULC Act are applicable and therefore, the aforesaid lands are required to be dealt with under the ULC Act. On the aforesaid premises, the argument which has been sought to be built up is that the Govt. had taken the view that on coming into force of the ULC Act, the provisions contained in the Agricultural Lands Ceiling Act are not applicable and the proceedings pending on 17th Feb.1976 under the Agricultural Lands Ceiling Act had to be filed and terminated and that they have to be initiated under the ULC Act. The grievance has been raised that the bid lands of the respondent which are situate in urban agglomeration of Rajkot are required to be dealt with under the ULC Act and that the provisions contained in the Agricultural Lands Ceiling Act are not applicable and the bid lands in dispute were urbanised lands in Rajkot Urban Agglomeration and the same cannot be dealt with by the Revenue Tribunal or the lower authorities under the Agricultural Lands Ceiling Act. It was further submitted that there was no factual basis for making a distinction in the cases of the lands of the nature with regard to Bhavnagar and which is in Rajkot. Mr.Nanavati also referred to the definition of the "land" as given in the Agricultural Lands Ceiling Act, under Section 2(17). However, Mr.Shelat has opposed it and has submitted that this argument cannot be raised in this Letters Patent Appeal because this point was

never argued before the learned Single Judge and even in this Appeal, this argument has been raised only during the rejoinder and the point was never argued in the main arguments. We are of the view that it is not necessary for us to deal with this question as has been raised by Mr.Nanavati in view of our conclusions which have been arrived at in the earlier part of this judgment which are sufficient for dismissal of this appeal.

10. For the reasons as aforesaid, we do not find any good reason to interfere with the order passed by the learned Single Judge. There is no basis to take a view different than the view taken by the learned Single Judge and the reasons given by him in support of his judgment and order. There is no merit in this Letters Patent Appeal. The same is hereby dismissed. Interim relief stands vacated. In the facts and circumstances of this case, no order as to costs.

(M.R. Calla, J.)

(R.R.Tripathi,J.)

Sreeram.